No. 21638

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

---

In the Matter of
HUBBARD'S INC., a New Mexico Corporation, together with its wholly owned subsidiaries, RANKIN DEPARTMENT STORES, INC., a California corporation, and WEILL'S INC., a California corporation,

*Bankrupt,*

WOHL SHOE COMPANY,

*Appellant,*

*vs.*

PETER M. ELLIOTT, Ancillary Receiver of the estate of RANKIN DEPARTMENT STORES, INC., a California corporation, Bankrupt, and COMMERCIAL DISCOUNT CORPORATION, a California corporation,

*Appellees.*

---

## APPELLEES' BRIEF.

---


BUCHALTER, NEMER, FIELDS & SAVITCH,
727 West 7th Street,
Los Angeles, California 90017,
*Attorneys for Commercial Discount Corporation, a California corporation,*

NAT ROSIN and
HARRY L. SCHUMAN,
1813 Wilshire Boulevard,
Los Angeles, California 90057,
*Attorneys for Ancillary Receiver.*



FILED
JUN 9 1967
WM. B. LUCK, CLERK



Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.



JUN 13 1967

## TOPICAL INDEX

## TABLE OF AUTHORITIES CITED

### Cases



### Rules



### Statute



### Textbook

No. 21638

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

---

In the Matter of
HUBBARD'S INC., a New Mexico Corporation, together with its wholly owned subsidiaries, RANKIN DEPARTMENT STORES, INC., a California corporation, and WEILL'S INC., a California corporation,

*Bankrupt,*

WOHL SHOE COMPANY,

*Appellant,*

*vs.*

PETER M. ELLIOTT, Ancillary Receiver of the estate of RANKIN DEPARTMENT STORES, INC., a California corporation, Bankrupt, and COMMERCIAL DISCOUNT CORPORATION, a California corporation,

*Appellees.*

---

## APPELLEES' BRIEF.

---

### I.

### STATEMENT OF CASE.

For the convenience of the Court, a designation of the parties and entities involved in this appeal is set forth:

1. "Hubbard's": Hubbard's, Inc., a New Mexico corporation. Hubbard's was adjudicated a bankrupt in proceedings pending in the District Court of the United States for the District of New Mexico.

2. "Rankin" or "Bankrupt": Rankin Department Stores, Inc., a California corporation. Rankin is a wholly owned subsidiary of Hubbard's. Ancillary bankruptcy proceedings were filed in the United States District Court, Central District of California. The

proceedings were referred to the Honorable Robert B. Powell. Prior to the bankruptcy proceedings, Rankin operated a retail department store and licensed other businesses to operate concessions in its store. Appellant was such a licensee and operated a shoe concession in Rankin's department store.

3. "Wohl" or "Appellant": Wohl Shoe Company is the parent company of Wetherby-Kayser Shoe Company. Wetherby-Kayser Shoe Company operated a shoe concession at Rankin. During the proceedings, Wetherby-Kayser was referred to as a division of Wohl and the names of Wohl and Wetherby-Kayser Shoe Company were interchangeably used by the parties, and reference to Wohl herein shall also include reference to Wetherby-Kayser Shoe Company. Wohl filed an Application to Reclaim the proceeds of accounts receivable in the ancillary bankruptcy proceedings. [R. 2 and 9.]

4. "Elliott": Peter M. Elliott was appointed ancillary receiver and is one of the Appellees.

5. "Commercial": Commercial Discount Corporation, a California corporation. Commercial financed the accounts receivable of Rankin and is one of the Appellees. [R. 27, ¶ 3.]

Wohl filed an Application and an amended Application to Reclaim the proceeds of accounts receivable arising out of charge sales of shoes and related items made by Wetherby-Kayser while it was a concessionee in the department store operated by Rankin. [R. 2 and 6.] Wohl contended that a Concession License Agreement, hereinafter referred to as the "Agreement", between Wetherby-Kayser Shoe Company and Rankin dated February 2, 1960, entitled it to reclaim $9,942.45 arising from charge sales in the shoe concession. [R. Ex.

B and R. 9.] Elliott and Commercial filed responsive pleadings denying that Wohl was entitled to reclamation. [R. 7 and 12.] A stipulation of facts was prepared by Wohl, Elliott, and Commercial and submitted to the Referee. [R. 27.] No other evidence was offered by Wohl.

The Referee prepared a Memorandum Opinion stating that while the matter was under submission, *Lord's, Inc. v. Malley* (7th Cir. 1965), 356 F. 2d 456, cert. denied in 385 U.S. 847, was decided and was practically on all fours with the matter under submission and ruled in favor of Appellees. [R. 45.]

On April 22, 1966, an Order was entered by the Referee denying Wohl's Application to Reclaim. [R. 52.] Wohl filed a Petition for Review. [R. 54.] On Review, the District Court sustained the findings of fact and conclusions of the Referee and affirmed the Referee's Order. [R. 58.]

## II.
## STATEMENT OF FACTS.

For convenience and brevity, the Appellees adopt Appellant's Statement of Facts.

## III.
## SUMMARY OF ARGUMENT.

The Referee found that no trust relationship was created by the Concession License Agreement entered into between Appellant and Rankin and that the relationship between Appellant and Rankin was that of creditor and debtor. Appellees contend that the Referee's findings, affirmed by the District Court, are not clearly erroneous.

## IV.
## ARGUMENT.

### THE REFEREE DID NOT ERR IN FINDING THAT THE CONCESSION LICENSE AGREEMENT ENTERED INTO BETWEEN APPELLANT AND RANKIN DID NOT CREATE A TRUST RELATIONSHIP BETWEEN THEM.

### A. A Condition Precedent to Tracing Funds or Accounts Receivable Into the Hands of a Trustee in Bankruptcy Must Be That a "Trust" Was Established.

Appellant had the burden to establish a trust relationship between it and Rankin.

> ". . . clearly the burden rests upon the claimant to establish the original trust relationship. He must prove his title and identify the trust fund or property . . . However, if it cannot first be shown that a trust has been created, there is no necessity for inquiry as to whether the property can be identified or traced."
>
> Vol. 4, *Collier on Bankruptcy* (14th Ed.) pp. 1205, 1206.

The only reference in the Agreement to a trust is in Paragraph 16 of said Agreement, which provides:

> *"All sales, cash and charge, shall be made in the name of Concessioner* [*Rankin*] *and shall be recorded by Concessioner at its expense.* All monies received by Concessionee's [Appellant's] employees, representing proceeds from sales, shall immediately be turned over to Concessioner [Rankin] who shall hold same in absolute trust for Conces-

> sionee; and, though commingled with other funds of Concessioner's same shall nevertheless be and remain in trust for Concessionee until paid Concessionee in accordance with the provisions of paragraph #7 hereinabove." (Emphasis added.)

The only monies received by Appellant's employees would be from cash sales. There is no reference in the Agreement to a trust between the parties concerning the collections of the charge sales. To the contrary, Paragraph 17 of the Agreement provides:

> "All charge sales made by Concessionee shall be submitted to Concessioner for approval which shall not be unreasonably withheld. *Concessioner shall act as Concessionee's agent in collecting and recording said charge sales and shall bear all expenses incident thereto. Concessioner guarantees the payment of all charge sales made by Concessionee and approved by Concessioner.*" (Emphasis added.)

Appellant's employees would not receive monies on charge sales and, therefore, assuming for argument only that a trust was created between Appellant and Rankin, the "res" of the trust would only pertain to monies received from cash sales. Charge sales were handled in a completely different manner. [Ex. B, ¶ 17.] Assuming for argument only that a trust was created regarding the proceeds of cash sales, Appellant has not alleged or proved that the Agreement created a trust regarding the proceeds of charge sales which it seeks to reclaim. Further, Appellant has not sustained its burden of proof in proving a trust between it and Rankin regarding monies received from cash sales. Appellant has the burden of proof to

establish that Rankin at the time of the filing of the proceedings had monies in its possession from cash sales made by Appellant and that the monies were turned over to Elliott. Appellant has not even proved that the Elliott received any monies from its concession. See Stipulation of parties:

> "4. That the Receiver, at the time of the closing of Rankin, received approximately $3,200.00 from the approximate number of thirty cash registers at Rankin, but there is no determination made as to which belongs to the cash registers in the department operated by Wetherby-Kayser." [R. 27, ¶ 4.]

Appellant relies on Paragraph 16 of the Agreement as a basis for its contention that an express trust was created between it and Rankin. (Op. Br. p. 6.) Implicit in Appellant's argument is that the subject of the trust is the charge sales; othrwise there is no subject matter of the trust, which is one of the essential elements of a creation of a trust. See California Civil Code, Section 2221, which provides:

> "§2221. Voluntary trust, how created as to trustor. Subject to the provisions of section eight hundred and fifty-two, a voluntary trust is created, as to the trustor and beneficiary, by any words or acts of the trustor, indicating with reasonable certainty:
>
> 1. An intenton on the part of the trustor to create a trust, and,
>
> 2. The subject, purpose and beneficiary of the trust."

Except for the first sentence in Paragraph 16 of the Agreement, no other reference is made in Paragraph 16

or elsewhere in the Agreement to the charge sales being held in trust. The mere use of the words "trust" or "trust fund" do not necessarily result in the creation of a trust:

> "Unless the parties' own characterization of the nature of their relationship is competent evidence, a question that has not been raised and is not being decided, the plaintiff's position is almost if not entirely without support, for he depends for his trust theory on Hagen's use of the words 'as a trust fund' on several occasions. . . . Were the trial court's attention limited to these words, as it faced the task of determining the relation created by the parties, it might well have been required to hold that a technical voluntary trust had been created. However, 'there is no magic in mere words of this character', as our Supreme Court stated in *Estate of Shaw,* (1926) 198 Cal. 352, 360 [246 Pac. 48], in determining that a trust relation could arise without the use of the words 'trust' or 'trustee'. So, too, it has been held that the use of the words 'in trust' does not necessary result in the creation of a trust, if the intention appears to be otherwise. (In re Dever's Will, (1921) 173 Wis. 208 [180 N. W. 839, 841].)"
>
> *Anderson v. Hagen,* 1937, 19 Cal. App. 2d 714, 719-720.

The provisions of the Agreement, and the conduct of the parties as set forth in the Stipulation of Facts, conclusively support the Referee's finding that no trust relationship with its attendant fiduciary duties was created by the Agreement.

### B. The Relationship Between Appellant and Rankin Was a Debtor-Creditor Relationship.

Rankin had to settle weekly with Appellant under the Agreement for all net sales, cash and charge. Paragraph 7 of the Agreement provides:

> "Concessionee's sales shall be turned over to Concessioner who shall remit for same in the following manner: On Wednesday of each week for all net sales, cash and charge, made during the preceding calendar week ending on Saturday. From the remittances, Concessioner shall deduct the Concession Fee provided for hereinabove, together with any and all incidental expenses, if any, authorized by Concessionee and which have been paid by Concessioner for or on Concessionee's account during the entire preceding calendar week. In the event this agreement is terminated by lapse of time or otherwise, Concessioner shall make full settlement at once, for all sales, cash and charge, made by Concessionee, up to and including the final day's sales in Concessionee's departments."

As set forth in Paragraph 5 of the Stipulation, the settlement was changed from a weekly settlement to a monthly settlement by Appellant and Rankin:

> "5. That it was the practice of Rankin and Wetherby-Kayser to commingle the receipts from both cash sales with all of the other receipts of Rankin. That Rankin settled on a monthly basis up until June, 1963; the monthly payment included all of the cash and charge sales made during the previous month." [R. 27, ¶ 5.]

It is important to note that the Agreement originally provided for weekly settlements on charge sales which under normal business practices would not even be billed until the month following the charge sale. Rankin had to pay Appellant even if the account debtor failed to pay or went into bankruptcy. All credit risk was assumed by Rankin. Even the risk of bad checks was assumed by Rankin pursuant to the Agreement:

> "All customers' checks in payment of merchandise shall be submitted by Concessionee for Concessioner's approval, said approval shall not be unreasonably withheld, and when given shall constitute full guarantee of payment thereof to Concessionee." [R. Ex. B, ¶ 18.]

Rankin had unrestricted use of the funds during the period between collection and settlement. The collections were not to be turned over on demand, but on agreed dates. Receipts from cash sales in the shoe concession were not segregated from other receipts of Rankin. [R. 27, ¶ 5.] There is no doubt that the relationship and conduct of the parties is inconsistent with a trust agreement between the Appellant and Rankin with its attendant fiduciary duties.

Appellees have not been able to find any California cases or cases in this circuit that are in point; however, there are cases in other circuits that are apposite. The facts presented in this case are almost on all fours with the facts presented *In the Matter of the Yeager Company* (6th Cir. 1963), 315 F. 2d 864. In said case

the appellant-lessees by written instrument leased space in the department store operated by the bankrupt. All sales made by the appellant-lessees were made as if they were merely a department in the bankrupt's store and all sales were for cash, except such sales as *Yeager* accepted for credit. All monies derived from the sales were immediately turned over to the bankrupt who kept an account thereof and on the 15th day of the following month accounted for all cash received and for sales accepted by it for credit and paid the lessee in full therefor less 10% for rental and other agreed deductions. The lessees would receive cash for all of their sales even though the bankrupt might not collect on the charges accounts which it accepted for credit for many months. The lessees' accounts receivable were carried on *Yeager's* books as its own property and commingled with other customers' accounts. At the time of bankruptcy, credit sales of $23,301.25 had not been accounted for. The Referee in Bankruptcy denied the reclamation petition of the lessees to require the trustee in bankruptcy to account for the credit sales. The Referee's order was affirmed by the District Judge and by the Circuit Court.

In *Yeager* the lessees claimed that a fiduciary relationship with respect to the accounts receivable existed between them and the bankrupt under which they were entitled to the equitable remedy of accounting. The lessees argued that a trust should be implied, although the lease did not provide for one. The court disagreed,

stating that merely because the lessees might be entitled to an equitable remedy of accounting under state law does not mean that they have established a trust and may recover in a reclamation proceeding in a bankruptcy court. The court in *Yeager* on page 865 stated:

> "As we view the arrangement between the parties, Mendel and Marshall [the lessees] carried no customer charge accounts. Whenever sales made by Mendel and Marshall had been accepted for credit by Yeager, the latter became the owner of them. *Yeager's* only obligation was to pay Mendel and Marshall in full for the accounts which it accepted for credit on the 15th day of the following month. All losses in the collection of the accounts were borne by Yeager. The only credit risk assumed by Mendel and Marshall was in collecting the amounts due them from Yeager. The relationship between Mendel and Marshall and Yeager *with respect to the accounts receivable accepted for credit by Yeager was that of debtor and creditor.* There was no trust established either express or implied. Since no trust was proved, it is unnecessary for us to go into the problem of tracing or consider the admissibility of expert testimony offered at the hearing in connection with that subject." (Emphasis added.)

In our case Appellant carried no customer charge accounts; in fact, Rankin guaranteed payment to Appellant of all charge sales it approved. Rankin had to pay Appellant in full for the charge sales which it accepted for credit as well as for the cash which it received, first weekly and then monthly. All losses in the collection of

the charge sales were borne by Rankin. Also, Appellees contend that no language in the Agreement between Appellant and Rankin can be found which creates a trust of the proceeds of the charge sales. Appellant attempts to distinguish the *Yeager* case by claiming that there was no express written trust agreement between the lessor and the beneficiary-lessee in said case, concluding:

> "As is evident, in the instant case, we have a written express trust agreement that was in full force and effect prior to and at the time of the bankruptcy." (Op. Br. p. 8.)

Appellant fails to identify the provisions of the Agreement creating a trust regarding charge sales because the Agreement does not contain such provisions. Appellees contend that except for Appellant's conclusion, it has not identified or proved that a trust of the proceeds of charge sales was created by the Agreement and the Court's statements in the *Yeager* case are applicable to the facts before this Court.

Another case which discusses whether a trust or debtor-creditor relationship was established between a reclamation petitioner and a bankrupt is *In re Chicago Express, Incorporated* (S.D.N.Y. 1963), 222 F. Supp. 566. In said case the motor carrier had an arrangement with a railroad company which transported the motor carrier's trucks by "piggy back." The railroad argued that the proceeds received by the debtor from its shippers and consignees, to the extent that they were attributable to the "piggy back" hauls, constituted trust funds for its benefit which it could reclaim in the

bankruptcy proceedings. The railroad apparently argued that a trust relationship was established because the debtor may have had a duty to account to the railroad for the funds it collected. The Referee held that only a debtor-creditor relationship was established. One of the factors which led the court to conclude that the relationship between the parties was one of creditor and debtor was the unconditional duty of the debtor to pay freight charges to the railroad within 15 days of the date of billing. The court did not find a trust relationship from the debtor's obligations to account to the railroad for funds it collected on the hauls.

Another case holding that only a debtor-creditor relationship was established on facts similar to the facts in our case is *In Re Martin's* (D.C. N.Y. 1935), 11 F. Supp. 99. The debtor in said case was a department store which filed a voluntary petition for reorganization. The petitioner in said case was the lessee of the fur department. Under the arrangement between the parties the lessee purchased all its merchandise and the debtor was not responsible for payment of the merchandise nor could it fix a price at which they were to be sold. The lessee paid 10% of all cash sales and 12½% on all charge sales to the debtor as rent. The debtor had to pay to the lessee the amount of all charge sales 60 days after the charge sale was made whether the charge sale was collected or not. The court held that the collection of the charge sales was the debtor's obligation and held that the relationship between the debtor and the petitioner was that of debtor and creditor. In

the case of *Issac McLean Sons Co. v. William S. Butler & Co. (In Re Gilchrist Co.)* (D.C. Mass. 1913), 208 Fed. 730, the court found a debtor and creditor relationship was established when the agreement between the lessor and lessee provided that all charge sales and cash were to be paid over to the lessor and the lessor would have to pay to the lessee the receipts from all the sales minus certain deductions monthly. The court held that no trust relationship existed. The court said at page 732:

> "The company's duty with regard to the proceeds so received was only that of accounting for them at the agreed times and on the agreed terms. * * * It was therefore not only free to mingle these proceeds with its own funds instead of keeping them in a separate fund, but that it should so mingle them was expressly stipulated. The proceeds were to remain part of its own funds, subject only to the obligation of accounting for them at the agreed times. I do not see how it can be said to have duty of custody or management regarding these proceeds, differing from that which it owed to all its creditors as to its own funds in general * * *"

In *United States Nat'l Bank in Johnston, Pa. v. Blauner's Affiliated Stores. Inc., et al.* (3rd Cir. 1935), 75 F. 2d 826, affirming 7 F. Supp. 850, the court held that the agreement between the parties created a trust. The lessor was to collect the credit accounts and to hold the money collected in a separate account. The *Blauner* case is distinguishable from the facts before the court, as in the *Blauner* case there was no requirement that the lessor account weekly or

monthly for the credit sales made by the lessee and the money collected by the lessor was to be held in a separate account. In our case, Rankin had to remit weekly and then monthly for all credit sales made by Appellant and it had the right to commingle all funds. The requirement that Rankin account first weekly and then monthly to Appellant and the unlimited right of Rankin to commingle all funds generated in the department store, distinguishes this case from the facts in the *Blauner* case and created a debtor and creditor relationship and not a trust relationship between Rankin and Appellant.

A recent case where the facts are almost identical to the facts before this Court is *Lord's Inc. v. Malley* (7th Cir. 1965), 356 F. 2d 456, cert. denied in 385 U.S. 847, where despite the use of the word "trust" in an agreement between a lessee of space from a bankrupt department store and the department store, the court found a mere debtor-creditor arrangement existed between the two parties. Appellant does not even attempt to distinguish said case in its Brief, although the Referee cited said case in his Memorandum Opinion as controlling on the facts in this matter. In said case the bankrupt leased space to the lessee, a shoe retailer, under a lease agreement which provided that all money and accounts received by the bankrupt would be held in truts for the lessee. No separate accounts were maintained, however, and the Court found that no trust was created and the relationship between the lessee and the bankrupt was that of a debtor and a creditor.

Contrary to the Agreement before this Court, the Agreement in *Lord's* provided that *all monies and accounts* received by the Concessioner, the bankrupt, would

be considered to be held by the bankrupt in trust for lessee, even if commingled:

> "It was agreed that sales would be made in the name of Lord's and recorded by Lord's at its expense, and that all moneys received by Cutter-Karcher's employees would be turned over immediately to Lord's. The agreement provided, however, in Article Sixteenth of the agreement that all the moneys and accounts so received by Lord's on account of sales in Cutter-Karcher's department would be considered to be held by Lord's:
>
> * * * in Trust for Lessee [Cutter-Karcher], and if mingled with Lessor's [Lord's] funds, either in cash drawer or deposit in the bank, or wherever such commingling may be effected, such funds shall nevertheless and hereby are considered trust funds, and are to be so held by Lessor in trust for Lessee until Lessor has paid to Lessee the total amount of such sales and receipts in accordance with the provisions hereof. In the event title to said funds shall at any time be called into question, the parties hereto desire to clearly indicate their intention that these funds shall be and are hereby considered and regarded by the parties hereto as trust funds irrespective of whether they are commingled or not, and said funds shall be held in trust for the benefit of Lessee." (356 F. 2d 456, 457.)

The Agreement in our case provides, contrary to the Agreement in *Lord's* that:

> "16. All sales, cash and charge, shall be made in the name of Concessioner and shall be recorded by Concessioner at its expense. All monies re-

ceived by Concessionee's employees, representing proceeds from said sales, shall immediately be turned over to Concessioner who shall hold same in absolute trust for Concessionee; and, though, commingled with other funds of Concessioner's same shall nevertheless be and remain in trust for Concessionee until paid Concessionee in accordance with the provisions of paragraph #7 hereinabove."

The only monies received by Appellant's employees would be from cash sales and the term "trust" as used in Paragraph 16 of the Agreement is applicable only to "monies received by Concessionee's employees, representing proceeds from said sales," sales referring to "cash sales."

As the Court in *Lord's* states:

> "There is nothing magical in the word 'trust' standing alone." (365 F. 2d 456, 458.)

The Court, after citing several authorities, held that insertion of the word "trust" did not create a trust between the parties. Discussing the relationship between the parties, the Court stated:

> "All sales here were made in the Lessor's name, all proceeds of such sales were immediately turned over to the Lessor with the understanding that they could be commingled with the Lessor's own funds. Not on demand, but on agreed dates, the Lessor paid a net amount (less certain agreed disbursements, returns, etc.) out of the Lessor's own general funds.
>
> "From the time of its receipt until settlement date (at least 15 days) the Lessor had unrestricted

> use of the funds. A similar relationship in *In re Martin's,* supra, was held to be consistent with that of debtor and creditor and not that of fiduciary and beneficiary." (356 F. 2d 456, 458.)

The Court's statements in *Lord's* are applicable to the facts now before this Court, and the relief sought by Appellant should be denied.

Appellees have not raised any question regarding the Uniform Commercial Code and therefore no reference will be made in this Brief to the Uniform Commercial Code.

### C. The Referee's Findings of Fact and Conclusions of Law Are Not Clearly Erroneous and the District Court Did Not Err in Affirming the Referee's Order.

General Orders in Bankruptcy No. 47 states that "unless otherwise directed in the order of reference the report of a referee or of a special master shall set forth his findings of fact and conclusions of law, and the judge shall accept his findings of fact unless clearly erroneous." Federal Rule of Civil Procedure 52a also provides in part that "findings of fact shall not be set aside unless clearly erroneous. . . ."

While it is true that the findings of a Referee are not necessarily conclusive on an appellate court, it appears to be well established that an appellate court should not disturb the Referee's findings unless there is overwhelming evidence that the Referee was mistaken and that the mistake would lead to a miscarriage of justice.

In the matter before the Court, the Referee found that no trust relationship was created between Appellant and Rankin by the Agreement.

This Court has stated that even in the absence of any need to judge the credibility of witnesses before the Referee, the reviewing court should exercise some degree of judicial restraint in regard for the expertise of the Referee in Bankruptcy.

See *Olympic Finance Co. v. Thyret* (9th Cir. 1964), 337 F. 2d 62.

## V.

## CONCLUSION.

For the foregoing reasons, the Order of the District Court should be affirmed.

BUCHALTER, NEMER, FIELDS & SAVITCH,
NAT ROSIN and
HARRY L. SCHUMAN,
*Attorneys for Appellees, Peter M. Elliott, Ancillary Receiver of the estate of Rankin Department Stores, Inc., a California corporation, and Commercial Discount Corporation, a California corporation.*

## Certificate.

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

RONALD E. GORDON